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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

5 DENNIS FLORER,

6 Plaintiff,

7 v.

8 DEVON SCHRUM, CARLA SCHETTLER,
9 ALAN WALTER, RICH MOSS, STEVE
10 SUNDBERG, RON KNIGHT, CHRIS
11 BOWMAN, STEVE SINLAIRE, STEVE
12 BARKER, ALAN KUNZ, JOHN
13 CAMPBELL, WILL PAUL, S. SUKERT,
14 KURT GRUBB, CANDICE GERMOAU,
15 JULIE SMITH, SANDY DIIMMEL, AL
16 MOSLEY, MILES LAWSON, RON
17 FRAKER, JOHN OYEN, DREW
WALTMAN, GARY PIERCE, MARK
KUCZA, DON HOLLBROOK, GERMAINE
BENSON, LINDA BELANGER, ELDON
VAIL, LAURA WYCKOFF-MEYER,
GUSTAVE MEZA, ALAN ROOKSTOOL,
EDUARDO MICHEL, (FNU) DANIEL,
ERIC JACKSON, and BERNIE WARNER,

18 Defendants.

No. C11-5135 BHS/KLS

**ORDER REGARDING DEFENDANTS'
MOTION FOR PROTECTIVE ORDER**

19 Before the Court is Defendant's Motion for Protective Order. ECF No. 88. Having
20 reviewed the motion, Plaintiff's response (90), Defendants' reply (ECF No. 91), and balance of
21 the record, the Court finds as follows:

22
23 **BACKGROUND**

24 Plaintiff Dennis Florer is currently incarcerated at the Monroe Corrections Complex
25 (MCC) in Monroe. This matter is proceeding on Plaintiff's Amended Complaint. ECF No. 44.
26 Plaintiff is suing several Department of Corrections employees of the Washington Corrections

Center (WCC), Clallam Bay Corrections Center (CBCC), and Washington State Penitentiary (WSP) for violation of his due process, First and Eighth Amendment rights, and for retaliation.

Plaintiff alleges that in March of 2011, Defendants transferred him to WSP's gang unit even though they knew of the high level of violence that existed therein and knowing that he would be assaulted. ECF No. 44, pp. 18-19. He claims that Defendants made this transfer in retaliation for his "historic filings of about 200 grievances and 7 lawsuits since 2004 against WSP and CBCC prison employees." *Id.* On March 6, 2011, Plaintiff alleges that he was assaulted by a WSP gang unit inmate while WSP guards Wyckoff-Meyer, Meza, Rookstool, Michel, Daniel, and two John Does failed to prevent the assault. *Id.*, p. 19. Plaintiff alleges that the assault took place in front of the unmanned officer's station on the east side of F gang unit and that there was no guard within the east side of the unit either prior to or during the assault. *Id.*

On March 19, 2012, this Court entered an order granting, in part, Plaintiff's Motion to Compel discovery. ECF No. 82. Specifically, the Court ordered Defendants to supplement a number of interrogatory responses and to produce a surveillance video, marked as "DVD Evidence Case No. 211-177, Evidence Locker No. 34." *Id.* at 5, 9. Defendants now seek a protective order limiting the manner in which the surveillance video is to be produced. They propose that a copy not be given to Plaintiff, but that Plaintiff be allowed only to view the video during his law library access time.

Defendants argue that providing a copy of the video presents two important security concerns. The first is that the plastic disc on which the video is produced can be broken or sharpened into a dangerous cutting or stabbing weapon. The second, and more pressing security concern, according to Defendants' counsel, is that Plaintiff could make and distribute copies of

1 the video or allow other offenders to view the video. Plaintiff will have access to specific
2 intelligence information of the surveillance and recording capabilities of the surveillance
3 cameras at the location in which the incident took place as well as any potential “blind spots”
4 (locations that have infrequent staff presence and no electronic surveillance) to commit acts of
5 violence and purveying contraband. Defendants also argue that once Plaintiff is allowed to view
6 the video and learn the recording capabilities of WSP, it is unlikely that he will ever be allowed
7 in that area again. ECF No. 88, at 2. Defendants propose that the video be shown to Plaintiff
8 only during his law library access time and that if Plaintiff wishes to view the video again, he can
9 notify staff and be given access to view it again during his scheduled law library time. *Id.*, at 4.

11 Plaintiff opposes Defendants’ motion because their allegations of security concerns are
12 conclusory and unsupported by any evidence. ECF No. 90. In addition, he states that he has
13 already viewed the live surveillance in the sergeant’s office at the WSP G Unit in January –
14 April 2010. *Id.*, at 4-5. Plaintiff also explains that he is not allowed to possess the surveillance
15 video where he is currently housed in the IMU. If Defendants mail the video to him, it would be
16 shown to him by staff delivering the legal mail, and forwarded to the IMU property guard where
17 it would be kept along with several other DVDs that have been produced to him in other
18 litigation (*e.g.*, *Florer v. Johnson-Bales*, Case No. C06-5561KLS/RJB). He would then be
19 allowed to view the video on the “counselor’s computer when needed.” ECF No. 90, 3-4.

22 DISCUSSION

23 Fed.R.Civ.P. 26(c)(1) provides that a court “may, for good cause, issue an order to
24 protect a party or person from annoyance, embarrassment, oppression, or undue burden or
25 expense, including one or more of the following: ... forbidding the disclosure or discovery.”
26 Fed.R.Civ.P. 26(c)(1)(A). Rule 26(c) authorizes the court to override the presumptively public

1 disclosure where good cause is shown. *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d
2 1096, 1103 (9th Cir.1999). To obtain a protective order, the party resisting discovery or seeking
3 limitations must, under Rule 26(c), show good cause for its issuance. Specifically, the moving
4 party must make a clear showing of a particular and specific need for the order. *Blankenship v.*
5 *Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.1975). The decision to issue a protective order rests
6 within the sound discretion of the trial court. *Wang v. Hsu*, 919 F.2d 130, 130 (10th Cir.1990).

8 It is not disputed that Plaintiff cannot possess the surveillance video while he remains in
9 IMU and can only view the video on his counselor's computer. Therefore, the issue is what
10 security concerns will be implicated if Plaintiff is allowed to possess the video when he is no
11 longer housed in the IMU. Defendants rely on statements made by their attorney as to the
12 security concerns related to the DVD to support their request for the protective order. In order
13 for the Court to rule on their motion, any security concerns must come from a witness who has
14 firsthand knowledge regarding these concerns and who can state, with specificity, why they have
15 legitimate security concerns. A statement from defense counsel is not enough.

17 Because the Court is mindful of bona fide security concerns relating to the disclosure of
18 surveillance videos, the Court shall defer ruling on Defendants' motion pending submission by
19 Defendant of factually specific evidence of such bona fide security concerns.

20 Accordingly, it is **ORDERED**:

21 (1) The Clerk shall **strike** the present noting date of Defendants' motion for
22 protective order (ECF No. 88) and **re-note** the motion for **June 29, 2012**.

23 Defendants shall provide factually specific evidence of their security concerns on
24 or before **June 29, 2012** or the Court will dismiss the motion.
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1 (2) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendant.

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3 **DATED** this 13th day of June, 2012.

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5 Karen L. Strombom
6 United States Magistrate Judge
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